

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

KIM A. PETERSON,

No. 16-10176

Debtor(s).

Memorandum on Application for Compensation

Attorney Jocelyn Godinho filed a Chapter 13 petition for debtor Kim Peterson on March 9, 2016. The case was converted to Chapter 7 at the debtor's request on August 19, 2016. Godinho seeks allowance an administrative priority of \$6,025.00 in compensation for services rendered to the debtor while the case was in Chapter 13, less amounts already paid. She also asks that any unpaid balance after the Chapter 7 case is closed be paid to her directly by the debtor.

Pursuant to § 330(a)(4)(B) of the Bankruptcy Code, the court may award compensation to counsel for a Chapter 13 debtor for reasonable services benefitting the debtor. Pursuant to § 503(b)(2), fees awarded pursuant to § 330(a) are entitled to administrative priority. The court finding the fees to be reasonable, the application will be approved and entitled to administrative priority.

Pursuant to § 348(d) of the Code, debts incurred after filing but before conversion from Chapter 13 to Chapter 7 are treated as having arisen immediately before the petition and are therefore subject to discharge. However, § 348(d) excepts claims specified in § 503(b). The issue is therefore whether unpaid Chapter 13 debtor's attorneys' fees are discharged in the converted case.

1 There are a few reported cases which support Godinho's position. See, e.g., *In re Babbs*, 265
2 B.R. 35 (Bkrtcy.S.D.N.Y. 2001). However, these cases seem to be based on a false syllogism: Section
3 348 treats all preconversion debts except priority debts for all purposes as having occurred prepetition;
4 this debt is a priority debt; therefore it is treated for no purpose as having occurred prepetition. The
5 proper syllogism is: Section 348 treats all preconversion debts except priority debts for all purposes as
6 having occurred prepetition; this debt is a priority debt; therefore it is not treated for all purposes as
7 having occurred prepetition. This was the logic followed by *In re Fickling*, 361 F.3d 172 (2nd Cir.
8 2004).

9 In *Fickling*, former counsel for a Chapter 11 debtor argued that its unpaid preconversion fees
10 were not dischargeable when the case was converted to Chapter 7. The court disagreed, reading
11 sections 348 (d) and 727(b) together to mean that the fees were treated as postpetition for purposes of
12 administrative claim allowance but prepetition for purposes of discharge. The court held: "Just
13 because § 348(d) does not *require* that pre-conversion administrative expense claims be treated 'for
14 all purposes' as if they had arisen pre-petition does not mean that such claims may *never* be treated as
15 if they had arisen pre-petition." 361 F.3d at 175 (emphasis in the original). This is the proper
16 interpretation of the law.

17 For the foregoing reasons, Godinho's request for allowance of an administrative expense will
18 be granted but her request for any unpaid amount to be enforceable against the debtor after discharge
19 will be denied. Godinho shall submit an appropriate form of order.
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21 Dated: December 9, 2016
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24 Alan Jaroslovsky
25 U.S. Bankruptcy Judge
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